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Catholic Diocese of Boise

IN THE SUPREME COURT OF THE STATE OF IDAHO

**PLANNED PARENTHOOD GREAT  
NORTHWEST, HAWAII, ALASKA,  
INDIANA, KENTUCKY**, on behalf of itself,  
its staff, physicians and patients, and  
**CAITLIN GUSTAFSON, M.D.**, on behalf  
of herself and her patients,

Petitioners,

vs.

**STATE OF IDAHO**,

Respondent.

SUPREME COURT DOCKET NO.  
49615-2022

**MEMORANDUM IN SUPPORT OF  
PETITION FOR LEAVE TO APPEAR AS  
AMICUS CURIAE BY ROMAN  
CATHOLIC DIOCESE OF BOISE**

**COMES NOW**, the Roman Catholic Diocese of Boise (“Diocese of Boise” or “Diocese”), by and through its attorneys of record, Sawtooth Law Offices, PLLC, and submits this memorandum in **SUPPORT** of its Petition for Leave to Appear as Amicus Curiae in this action. The Diocese participate as amicus curiae in this action in support of Respondent, State of Idaho, and in support of Senate Bill 1309, the so-called “Fetal Heartbeat Preborn Child Protection Act”.

MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO APPEAR AS AMICUS  
CURIAE BY ROMAN CATHOLIC DIOCESE OF BOISE - 1

## PROCEDURAL BACKGROUND

Senate Bill 1309 (Idaho Legisl, 2022) was signed in to law on March 23, 2022 by the Governor of Idaho. By express provision, the law becomes effective 30 days thereafter. S.B. 1309, sec. 7 (Idaho Legisl, 2022). Senate Bill 1309 relates, generally, to abortion of an unborn person after detection of a fetal heartbeat, and provides for enumerated penalties and civil actions for violations of the statute. S.B. 1309, sec. 3-6 (Idaho Legisl, 2022).

On March 30, 2022, Petitioners brought the instant action, under purported original jurisdiction to this Court, seeking a declaration that the Fetal Heartbeat Preborn Child Protection Act violates the Idaho Constitution and requests that the Court enjoin its application or enforcement. *Verified Pet. For Writ of Prohibition and Appl. for Declaratory Judgment* (Mar. 30, 2022). Petitioners filed their opening brief simultaneously. *Petitioners' Brief in Support of Verified Pet. For Writ of Prohibition and Appl. for Declaratory Judgment* (Mar. 30, 2022). The Court then set a briefing schedule based on an expedited review schedule. *Order RE: Verified Petition for Writ of Prohibition* (Mar. 31, 2022). Respondent sought reconsideration of the expedited briefing schedule. *Motion to Reconsider Order RE: Verified Petition for Writ of Prohibition* (Apr. 1, 2022). The Court then entered an order modifying the briefing schedule – setting forth that the Respondent's brief is due April 28, 2022 and the reply brief of Petitioners is due fourteen days later. *Order Granting Motion to Reconsider* (Apr. 8, 2022). Pursuant to that order, implementation of S.B. 1309 is stayed pending further order of the Court. *Id.*

## STATEMENT OF INTEREST<sup>1</sup>

Amongst other tenets, the Diocese of Boise supports laws that recognize the sanctity of

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<sup>1</sup> Facts in support of the Diocese's statement of interest are set forth in the Declaration of Peter Christensen, filed herewith.

human life, including an unborn child's fundamental right to life. The Diocese keeps itself and its faithful (approximately 209,172 members of the Catholic Church within the state of Idaho), informed of legislative and judicial developments related to the sanctity of life, including matters related to unborn humans. Throughout its history, the Diocese has maintained a vested interest in the dignity and sanctity of all human life, including life of the unborn.

As it relates to this matter, the Diocese participated in the legislative process that resulted in the passage of S.B. 1309 during the Second Regular Session of the 66th Legislature of the State of Idaho, 2022. Throughout the session, the Diocese counseled and educated legislators regarding the same, and provided support to the proponents of the Fetal Heartbeat Preborn Child Protection Act. The Diocese is fully capable of aiding the Court on the legal issues involved in this case and offers a valuable perspective as it relates to this issue.

### **ARGUMENT**

Rule 8 of the Idaho Appellate Rules provide the following relative to amicus curiae participation:

An attorney, or person or entity through an attorney, may appear as amicus curiae in any proceeding by ... leave of the Supreme Court upon written application served upon all parties, setting forth the particular employment, if any, the interest of the applicant in the appeal or proceeding and the name of the party in whose support the amicus curiae would appear. The application shall also state whether leave is sought to file an amicus curiae brief or participate in oral argument, or both. Any objection to the appearance of an amicus curiae must be made by motion within 14 days of service of the application in the manner provided for motions under Rule 32. Leave to appear as amicus curiae shall be by written order of the Supreme Court which shall specify the manner of appearance by the amicus curiae attorney and state the time for filing of any amicus curiae brief.

I.A.R. 8. The Diocese of Boise seeks leave to file a brief in support of Respondent and in support of the Fetal Heartbeat Preborn Child Protection Act, Senate Bill 1309 (Idaho Legisl, 2022).

The Diocese of Boise and its faithful have a strong interest in the instant appeal, and is uniquely positioned to provide insight into this appeal. First, the Diocese of Boise represents and counts among its faithful over 200,000 Idaho residents. *Christensen Decl.*, at ¶ 4. As such it represents a significant portion of the Idaho population and electorate. Second, the Diocese of Boise has been involved with and supportive of legislation and public policy related to the sanctity of life, and protecting the innocent and unborn. *Id.*, at ¶¶ 5-8. Third, the Diocese of Boise and the Roman Catholic Church is widely known and recognized for its education, ministry, and advocacy in support of the sanctity of life and seeking legal protection for the unborn. *Id.* Fourth, the Diocese of Boise directly participated in and advocated for passage of Senate Bill 1309, the Fetal Heartbeat Preborn Child Protection Act. *Id.*, at ¶ 9. Finally, organizational interests within the Roman Catholic Church, of which the Diocese of Boise is part, have been regularly granted status as amicus curiae in cases throughout the United States involving issues related to the legal status of the unborn, abortions, contraception, women’s health, and the fundamental rights of persons. See, e.g., Brief of Amici Curiae of United States Conference of Catholic Bishops and Other Religious Organizations in Support of Petitioners, No. 19-1392, *Dobbs v. Jackson Women’s Health Org.* (141 S. Ct. 2619 (2021)); Brief of Amici Curiae the Roman Catholic Diocese of Jackson and the Roman Catholic Diocese of Biloxi in Support of Petitioners, No. 19-1392, *Dobbs v. Jackson Women’s Health Org.* 141 S. Ct. 2619 (2021)); Brief of Amici Curiae United States Conference of Catholic Bishops and Washington State Catholic Conference Supporting Petitioners, No. 15-862, *Stormans, Inc. v. Wiesman*, 579 U.S. 942 (2016); Brief of Amicus Curiae the Iowa Catholic Conference in Support of Respondents-Appellees, No. 17-1579, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State & Iowa Bd. of Med.* 962 N.W.2d 37 (Iowa, 2021); Brief Amici Curiae of Roman Catholic Archbishop of Washington, a Corporation

Sole; the Consortium of Catholic Academies of the Archdiocese of Washington, Inc.; Archbishop Carroll High School, Inc.; Catholic Charities of the Archdiocese of Washington, Inc.; and the Catholic University of America in Support of Appellants and Reversal, Nos. 12-5273, 12-5291, *Wheaton College v. Sebelius*, 703 F.3d 551 (U.S. D.C. Cir. 2012).

By reason of the above and foregoing, the Diocese of Boise submits that it has unique and special interests and perspectives to offer to the Court relative to the legal issues in this case, and as such humbly submits that it ought to be permitted leave to appear as an amicus curiae in furtherance of the interests of justice.

### CONCLUSION

For the above and foregoing reasons, the Diocese of Boise respectfully requests that the Court **GRANT** its *Petition for Leave to Appear as Amicus Curiae*, thereby enabling the Diocese of Boise to file a brief in support of the Respondent.

**DATED** this 11<sup>th</sup> day of April, 2022.

SAWTOOTH LAW OFFICES, PLLC



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David P. Claiborne

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following on this 11<sup>th</sup> day of April, 2022 by the following method:

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